

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of the Commission's Space	)	IB Docket No. 02-34
Station Licensing Rules and Policies	)	
	)	
2000 Biennial Regulatory Review -	)	IB Docket No. 00-248
Streamlining and Other Revisions of	)	
Part 25 of the Commission's Rules	)	
Governing the Licensing of, and	)	
Spectrum Usage by, Satellite Network	)	
Earth Stations and Space Stations	)	

**REPLY COMMENTS OF PANAMSAT CORPORATION**

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby files reply comments in response to the comments that have been filed in the above-captioned proceeding.<sup>1</sup>

Overwhelmingly, the comments addressing the principal issue raised in the NPRM favor improving the processing round system over abandoning it in favor of a first come, first served regime.<sup>2</sup> These comments show that processing rounds,

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<sup>1</sup> *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies; 2000 Biennial Regulatory Review--Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Notice of Proposed Rulemaking and First Report and Order, IB Docket Nos. 02-34 and 00-248, FCC 02-45, 17 FCC Rcd 3847 (2002).

<sup>2</sup> The following either support improving the currently processing round system and/or oppose first come, first served as proposed: Boeing Company; Cellular Telecommunications and Internet Association (but proposes a reallocation after one year); Final Analysis Communications Services Inc.; Hughes Network Systems, Inc., Hughes Communications, Inc., Hughes Communications Galaxy, Inc. (collectively "Hughes"); Inmarsat Ventures PLC; PanAmSat Corporation; Pegasus Development Corporation; SES Americom, Inc.; Satellite Industry Association; and Telesat Canada (basically neutral). Only Teledesic LLC supports first come, first served approach, as proposed. Intelsat LLC supports a modified first come, first served approach.

particularly if fine tuned from the current system, are superior to a first come, first served regime.<sup>3</sup> Teledesic LLC (“Teledesic”) as, in essence, the lone supporter of first come, first served as proposed, does not meaningfully address the deficiencies of first come, first served. Moreover, it would eliminate rules that protect against the very problems it contends are the reasons for disposing of the incumbent processing round approach.

In addition, commenters generally support clarifying the Commission’s replacement expectancy policy. Furthermore, PanAmSat’s proposal for clarification of the replacement expectancy policy to allow: (1) higher power levels; (2) more expansive coverage areas; and (3) the addition of expansion frequencies within an already-licensed band, are either supported or unchallenged and should be adopted. By clarifying and improving this policy, the Commission would encourage innovation and investment in satellite technology that would undoubtedly be in the public interest.

## **DISCUSSION**

### **I. The Parties Support Streamlining the Processing Round Process Rather Than Adopting A First Come, First Serve Regime.**

The majority of comments stress the benefits of the processing round approach to licensing satellite systems over a first come, first served regime. Most parties recognize that a first come, first served licensing process would spark a stampede to the Commission as soon as it was enacted and every time an orbital location became available. Moreover, it would “be difficult, if not impossible, to control [speculators] despite the protections outlined in the Commission’s proposal.”<sup>4</sup>

Only two of the 12 parties filing comments on the Commission’s proposals support a first-come, first-served licensing regime– Teledesic and Intelsat – and only

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<sup>3</sup> Processing rounds limit the applicant pool to entities that are qualified to build their systems and reasonably can be expected to do so and also deter speculators and applicants filing for anti-competitive reasons, both of which have free reign in a first come, first served system.

Teledesic supports “first come, first served” in the form proposed by the Commission. Teledesic and Intelsat, however, fail to address the problems with that approach as identified by the other parties.

Teledesic does not come to terms with the incentives that a “first come, first served” regime would create for speculators and green mailers to game the system and delay the introduction of service by *bona fide* applicants and satellite operators. Intelsat addresses this issue, but with a proposed cure – imposing a \$10 million bond– that is worse than the disease. Further, neither Teledesic nor Intelsat addresses the potential for the Commission becoming bogged down in court challenges and litigation among the parties if it were to make a wholesale revision of its licensing regime.

Teledesic and Intelsat, moreover, overlook several benefits that would be lost if the Commission were to switch from processing rounds to a first come, first served system. For example, this change would reduce the incentive for applicants to cooperate on spectrum sharing and coordination issues -- which have by and large led to more efficient use of the spectrum -- because the first filer would simply assert priority. In addition, processing rounds can facilitate prompt initiation of service by weeding out -- prior to licensing -- applicants who lack financial ability or do not conform to the Commission’s policies for initial and expansion satellites.

## **II. Streamlining The Processing Round Approach Would Remedy Existing Problems.**

Just as most parties oppose adoption of the first come, first served approach, they are nearly uniform in their support for reforming and streamlining processing rounds. Many of the present processing round delays have nothing to do with inherent defects in the process, but are a result of the Commission simply not setting tighter time limits, not pushing the applicants hard enough to resolve differences, and not expediting spectrum allocation and service rules proceedings, upon which licensing decisions are

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<sup>4</sup> Final Analysis comments at 3.

dependent. It is also important to note, as Hughes does, that sometimes delays merely are attributable to the sheer size and complexity of the proceedings – difficulties that could not be overcome by an arbitrary first-come, first-served processing regime.

Accordingly, by commencing processing rounds promptly and establishing fixed periods for applicants to settle their differences and, failing that, for the Commission to assign orbital locations and frequencies in a timelier manner, delay could be limited and the process round approach markedly improved.

### **III. The Commission Should Clarify Its Replacement Expectancy Policy.**

The parties, including PanAmSat, generally support the Commission's proposal for streamlining unopposed replacement satellite applications having technical characteristics consistent with those of a retiring satellite.

In addition, PanAmSat proposed that the Commission clarify that the following changes in satellite design and operating characteristics are consistent with the replacement expectancy policy: (1) increasing power; (2) expanding coverage; and (3) adding expansion frequencies within the same band, such as adding expanded Ku-band frequencies to already licensed conventional Ku-band frequencies. This proposal enjoys broad support from those addressing the issue. PanAmSat urges the Commission to adopt its clarification request in order to foster investment in replacement satellites.

### **IV. The Commission Should Reject CTIA's Proposal For Reallocation Of Spectrum Allocated To Satellite Services.**

CTIA takes the position that the Commission should reclaim and reallocate spectrum designated for satellite services in the event satellite licensees fail to meet their milestones or no one has applied for the spectrum within one year of its initial

allocation.<sup>5</sup> CTIA, however, misunderstands the distinction between reassigning spectrum to another applicant and reallocating spectrum to another radio service.

Nowhere in the NPRM does the Commission propose to reallocate any spectrum allocated for satellite services. CTIA's proposal, therefore, is outside the scope of this proceeding and, in any event, it should be rejected.

Basing allocation decisions on short term developments is bad policy and is contrary to the public interest. As CTIA well knows, both terrestrial and satellite services can take years, and sometimes decades, to develop after a spectrum allocation has been made. For example, although the Commission's first allocation for cellular service occurred in 1970,<sup>6</sup> the first cellular applications were not filed until 1982 and widespread deployment of cellular services did not take place until the 1990s. If the Commission had reallocated this spectrum because no one had successfully applied for and implemented a cellular system in the early going, the cellular radio service as we know it would not exist today. Moreover, a "use it or lose it" policy like the one CTIA has proposed is particularly inappropriate in the case of satellite allocations, which take years of multinational effort to achieve. Once lost, these allocations are all but impossible to recover.

### CONCLUSION

In view of the foregoing, the Commission should seek to improve its processing round licensing approach, rather than replacing it with a first come, first served regime. Furthermore, the Commission should clarify the scope of its replacement expectancy

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<sup>5</sup> See Comments of the Cellular Telecommunications & Internet Association, IB Docket No. 02-34, at 8 (June 3, 2002).

<sup>6</sup> See *In re Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz and Amendment of Parts 2, 18, 21, 73, 74, 89, 91 and 93 of the Rules Relative to Operations in the Land Mobile Service between 806 and 960 MHz*, First Report and Order and Second Notice of Inquiry, 19 Rad. Reg. 2d (P & F) 1663, ¶9 (1970) (allocating 75 MHz of spectrum to common carrier cellular land mobile communications systems).

policy in order to eliminate uncertainty and encourage investment and innovation, and should reject CTIA's proposal for reallocating satellite spectrum.

Respectfully submitted,

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